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San Jose

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United States District Court  
Northern District of California, San Jose Division

San Francisco Technology Inc.

Plaintiff

vs.

The Glad Products Company, Bajer Design  
& Marketing Inc., Bayer Corporation,  
Bright Image Corporation, Church &  
Dwight Co. Inc., Colgate-Palmolive  
Company, Combe Incorporated, The Dial  
Corporation, Exergen Corporation,  
GlaxoSmithKline LLC, Hi-Tech  
Pharmaceutical Co. Inc., Johnson Products  
Company Inc., Maybelline LLC, McNeil-  
PPC Inc., Medtech Products Inc., Playtex  
Products Inc., Reckitt Benckiser Inc.,  
Roche Diagnostics Corporation,  
SoftSheen-Carson LLC, Sun Products  
Corporation, Sunstar Americas Inc.

Defendants

Case No.

Complaint

Demand For Jury Trial

CV 10-00966

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Plaintiff San Francisco Technology Inc. ("SF Tech") files this Complaint against defendants The Glad Products Company ("Glad"), Bajer Design & Marketing Inc. ("Bajer"), Bayer Corporation ("Bayer"), Bright Image Corporation ("Bright Image"), Church & Dwight Co. Inc. ("Church & Dwight"), Colgate-Palmolive Company ("Colgate-Palmolive"), Combe Incorporated ("Combe"), The Dial Corporation ("Dial"), Exergen Corporation ("Exergen"), GlaxoSmithKline LLC ("GSK"), Hi-Tech Pharmacal Co., Inc. ("Hi-Tech Pharmacal"), Johnson Products Company Inc. ("Johnson"), Maybelline LLC ("Maybelline"), McNeil-PPC Inc. ("McNeil-PPC"), Medtech Products Inc. ("Medtech"), Playtex Products Inc. ("Playtex"), Reckitt Benckiser Inc. ("RBI"), Roche Diagnostics Corporation ("Roche"), SoftSheen-Carson LLC ("SoftSheen-Carson"), Sun Products Corporation ("Sun"), Sunstar Americas Inc. ("Sunstar") and alleges as follows:

### Nature of Action

1. This is a *qui tam* action to impose civil fines for false marking. As alleged further below, each defendant has falsely marked articles in violation of 35 U.S.C. § 292 and must be civilly fined for each offense: "Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article, the word 'patent' or any word or number importing that the same is patented, for the purpose of deceiving the public ... Shall be fined not more than \$500 for every such offense." Each defendant has falsely marked products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, each defendant falsely marked articles with intent to deceive the public.

### Parties

2. Plaintiff San Francisco Technology is a Delaware corporation with its principal place of business in San Jose, California.

3. Glad: Upon information and belief, Glad is a Delaware business entity with a principal place of business at 1221 Broadway, Oakland CA 94612.

4. Bajer: Upon information and belief, Bajer is a Wisconsin business entity with its principal place of business at 1801 Airport Road Ste A, Waukesha WI 53188.

5. Bayer: Upon information and belief, Bayer is an Indiana business entity with its principal place of business at 100 Bayer Road, Pittsburgh PA 15205.

1           6.     Bright Image: Upon information and belief, Bright Image is an Illinois business entity  
2 with a principal place of business at 2830 S 18th Ave, Broadview IL 60153.

3           7.     Church & Dwight: Upon information and belief, Church & Dwight is a Delaware  
4 business entity with a principal place of business at 469 N Harrison St, Princeton NJ 08543.

5           8.     Colgate-Palmolive: Upon information and belief, Colgate-Palmolive is a Delaware  
6 business entity with a principal place of business at 300 Park Ave, New York NY 10022-7499.

7           9.     Combe: Upon information and belief, Combe is a Delaware business entity with a  
8 principal place of business at 1101 Westchester Ave, White Plains NY 10604.

9           10.    Dial: Upon information and belief, Dial is a Delaware business entity with a principal  
10 place of business at 19001 N Scottsdale Rd, Scottsdale AZ 85255.

11          11.    Exergen: Upon information and belief, Exergen is a Massachusetts business entity  
12 with a principal place of business at 51 Water St., Watertown MA 02172.

13          12.    GSK: Upon information and belief, GSK is a Delaware business entity with a  
14 principal place of business at One Franklin Plaza 200 N 16th St, Philadelphia PA 19102.

15          13.    Hi-Tech Pharmacal: Upon information and belief, Hi Tech is a Delaware business  
16 entity with a principal place of business at 369 Bayview Ave, Amityville NY 11701.

17          14.    Johnson: Upon information and belief, Johnson is a Delaware business entity with a  
18 principal place of business in Dallas, Texas.

19          15.    Maybelline: Upon information and belief, Maybelline is a New York business entity  
20 with a principal place of business in New York.

21          16.    McNeil-PPC: Upon information and belief, McNeil-PPC is a New Jersey business  
22 entity with a principal place of business at 7050 Camp Hill Road, MB # 219; Fort Washington PA  
23 19034.

24          17.    Medtech: Upon information and belief, Medtech is a Delaware business entity with a  
25 principal place of business at 90 N Broadway, Irvington NY 10533.

26          18.    Playtex: Upon information and belief, Playtex is a Delaware business entity with a  
27 principal place of business in Westport, Connecticut.

28          19.    RBI: Upon information and belief, RBI is a Delaware business entity with a principal

place of business at 399 Interpace Parkway, Parsippany NJ 07054-0225.

20. Roche: Upon information and belief, Roche is an Indiana business entity with a principal place of business at 9115 Hague Road, P.O. Box 50457, Indianapolis IN 46250.

21. SoftSheen-Carson: Upon information and belief, SoftSheen-Carson is a New York business entity with a principal place of business in New York, New York.

22. Sun: Upon information and belief, Sun is a Delaware business entity with a principal place of business at 60 Danbury Road, Wilton CT 06897.

23. Sunstar: Upon information and belief, Sunstar is a Delaware business entity with a principal place of business at 4635 W Foster Ave, Chicago IL 60630.

### Jurisdiction & Venue

24. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1355(a).

25. Venue is appropriate in this District under 28 U.S.C. §§ 1391(b) and 1395(a).

26. This court has personal jurisdiction over each defendant, as alleged further below.

27. Glad: Upon information and belief, Glad's principal place of business is in Oakland, California, which is within this District. Upon information and belief, Glad has appointed an agent for service of process in California: CT Corporation System, 818 West Seventh St, Los Angeles CA 90017. Upon information and belief, Glad has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

28. Bajer: Upon information and belief, Bajer has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic. Bajer advertises its products, including its falsely marked products on its web site, at [www.bajerdesign.com](http://www.bajerdesign.com). Bajer advertises on that web site<sup>1</sup> that its products are sold at many retail store chains which have locations in California and in this District, including Ace, CVS, Family Dollar, K-Mart, Longs, Safeway, Sam's Club, Walgreens, and Wal-Mart.

<sup>1</sup> <http://www.bajerdesign.com/wheretofindus.html>

1           29.     Bayer: Upon information and belief, Bayer has appointed an agent for service of  
 2 process in California: Corporation Service Company, 2730 Gateway Oaks Dr Ste 100, Sacramento  
 3 CA 95833. Upon information and belief, Bayer has sold its products, including its falsely marked  
 4 products in California and in this District and/or in the stream of commerce with knowledge that they  
 5 would be sold in California and in this District. Upon information and belief, such sales are  
 6 substantial, continuous, and systematic.

7           30.     Bright Image: Upon information and belief, Bright Image has sold its products,  
 8 including its falsely marked products in California and in this District and/or in the stream of  
 9 commerce with knowledge that they would be sold in California and in this District. Upon  
 10 information and belief, such sales are substantial, continuous, and systematic. Bright Image  
 11 advertises its products, including its falsely marked products, on its web site, at  
 12 www.touchandglow.com. On that web site, Bright Image sells its products, including its falsely  
 13 marked products to customers, including, upon information and belief, customers in California and in  
 14 this District.

15           31.     Church & Dwight: Upon information and belief, Church & Dwight has appointed an  
 16 agent for service of process in California: National Registered Agents Inc., 2875 Michelle Dr Ste  
 17 100, Irvine CA 92606. Upon information and belief, Church & Dwight has sold its products,  
 18 including its falsely marked products in California and in this District and/or in the stream of  
 19 commerce with knowledge that they would be sold in California and in this District. Upon  
 20 information and belief, such sales are substantial, continuous, and systematic.

21           32.     Colgate-Palmolive: Upon information and belief, Colgate-Palmolive has appointed an  
 22 agent for service of process in California: CT Corporation System, 818 West Seventh St, Los Angeles  
 23 CA 90017. Upon information and belief, Colgate-Palmolive has sold its products, including its  
 24 falsely marked products in California and in this District and/or in the stream of commerce with  
 25 knowledge that they would be sold in California and in this District. Upon information and belief,  
 26 such sales are substantial, continuous, and systematic.

27           33.     Combe: Upon information and belief, Combe has sold its products, including its  
 28 falsely marked products in California and in this District and/or in the stream of commerce with



1 knowledge that they would be sold in California and in this District. Upon information and belief,  
 2 such sales are substantial, continuous, and systematic.

3 34. Dial: Upon information and belief, Dial has appointed an agent for service of process  
 4 in California: Corporation Service Company, 2730 Gateway Oaks Dr Ste 100, Sacramento CA  
 5 95833. Upon information and belief, Dial has sold its products, including its falsely marked products  
 6 in California and in this District and/or in the stream of commerce with knowledge that they would be  
 7 sold in California and in this District. Upon information and belief, such sales are substantial,  
 8 continuous, and systematic.

9 35. Exergen: Upon information and belief, Exergen has sold its products, including its  
 10 falsely marked products in California and in this District and/or in the stream of commerce with  
 11 knowledge that they would be sold in California and in this District. Upon information and belief,  
 12 such sales are substantial, continuous, and systematic. Exergen advertises on its web site<sup>2</sup> that its  
 13 temporal thermometer products are sold at many retail store chains which have locations in California  
 14 and in this District, such as Toys R Us, Babies R Us, Costco, Walgreens, Sam's Club, and Wal-Mart.  
 15 Exergen also advertises on its web site<sup>3</sup> the contact information for its California sales  
 16 representatives.

17 36. GSK: Upon information and belief, GSK has appointed an agent for service of process  
 18 in California: Corporation Service Company, 2730 Gateway Oaks Dr Ste 100, Sacramento CA  
 19 95833. Upon information and belief, GSK has sold its products, including its falsely marked  
 20 products in California and in this District and/or in the stream of commerce with knowledge that they  
 21 would be sold in California and in this District. Upon information and belief, such sales are  
 22 substantial, continuous, and systematic.

23 37. Hi-Tech Pharmacal: Upon information and belief, Hi-Tech Pharmacal has sold its  
 24 products, including its falsely marked products in California and in this District and/or in the stream  
 25 of commerce with knowledge that they would be sold in California and in this District. Upon  
 26 information and belief, such sales are substantial, continuous, and systematic. Upon information and  
 27 belief, Hi-Tech Pharmacal operates a web site to advertise its falsely marked products at  
 28

<sup>2</sup> <http://www.exergen.com/medical/TAT/tatconsumerpage.htm>

<sup>3</sup> <http://www.exergen.com/industrl/contacts/index.htm>

1 www.zostrix.com. A page<sup>4</sup> on that web site advertises that the falsely marked products can be  
 2 purchased at retail store chains which have locations in California and in this District, such as CVS,  
 3 K-Mart, Longs Drugs, Walgreens, Stop & Shop, and Rite Aid.

4 38. Johnson: Upon information and belief, Johnson has sold its products, including its  
 5 falsely marked products in California and in this District and/or in the stream of commerce with  
 6 knowledge that they would be sold in California and in this District. Upon information and belief,  
 7 such sales are substantial, continuous, and systematic. Johnson advertises its products, including the  
 8 falsely marked products, on its web site, www.johnsonproducts.com. A page<sup>5</sup> on that web site invites  
 9 prospective purchasers to search for local retail stores where Johnson's products, including the falsely  
 10 marked products, are sold. That page indicates that those products are sold at many retail stores in  
 11 California and in this District, including at least 22 locations in or near this court's zip code, 95113.

12 39. Maybelline: Upon information and belief, Maybelline has sold its products, including  
 13 its falsely marked products, in California and in this District and/or in the stream of commerce with  
 14 knowledge that they would be sold in California and in this District. Upon information and belief,  
 15 such sales are substantial, continuous, and systematic.

16 40. McNeil-PPC: Upon information and belief, McNeil-PPC has sold its products,  
 17 including its falsely marked products, in California and in this District and/or in the stream of  
 18 commerce with knowledge that they would be sold in California and in this District. Upon  
 19 information and belief, such sales are substantial, continuous, and systematic. Upon information and  
 20 belief, McNeil-PPC has appointed an agent for service of process in California: CT Corporation  
 21 System, 818 West Seventh St, Los Angeles CA 90017.

22 41. Medtech: Upon information and belief, Medtech has sold its products, including its  
 23 falsely marked products, in California and in this District and/or in the stream of commerce with  
 24 knowledge that they would be sold in California and in this District. Upon information and belief,  
 25 such sales are substantial, continuous, and systematic. On its Dermoplast product labels, Medtech  
 26 represents that it is "a Prestige Brands" company, apparently referring to Prestige Brands Inc., which  
 27  
 28

<sup>4</sup> <http://www.zostrix.com/pages/buy.asp>

<sup>5</sup> <http://www.johnsonproducts.com/store.php>

1 maintains the web site [www.prestigebrands.com](http://www.prestigebrands.com). On that web site,<sup>6</sup> Medtech advertises that its  
 2 falsely marked products are available for purchase in California at numerous retail store chains with  
 3 many locations in California and in this District, such as Raley's, Albertson's, Sav-On Drug, K-Mart,  
 4 Price Less Drug, Walgreens, Rite-Aid Drug, and CVS.

5 42. Playtex: Upon information and belief, Playtex has sold its products, including its  
 6 falsely marked products, in California and in this District and/or in the stream of commerce with  
 7 knowledge that they would be sold in California and in this District. Upon information and belief,  
 8 such sales are substantial, continuous, and systematic.

9 43. RBI: Upon information and belief, RBI has sold its products, including its falsely  
 10 marked products, in California and in this District and/or in the stream of commerce with knowledge  
 11 that they would be sold in California and in this District. Upon information and belief, such sales are  
 12 substantial, continuous, and systematic. Upon information and belief, RBI has appointed an agent for  
 13 service of process in California: Corporation Service Company, 2730 Gateway Oaks Dr Ste 100,  
 14 Sacramento CA 95833.

15 44. Roche: Upon information and belief, Roche has sold its products, including its falsely  
 16 marked products, in California and in this District and/or in the stream of commerce with knowledge  
 17 that they would be sold in California and in this District. Upon information and belief, such sales are  
 18 substantial, continuous, and systematic. Upon information and belief, Roche has appointed an agent  
 19 for service of process in California: CT Corporation System, 818 West Seventh St, Los Angeles CA  
 20 90017. Upon information and belief, Roche operates the web site at [www.accu-chek.com](http://www.accu-chek.com) to  
 21 advertise its Accu-Chek products. On that web site, Roche advertises that its falsely marked products  
 22 are available for purchase at numerous retail store chains with many locations in California and in  
 23 this District, such as CVS, Walgreens, Wal-Mart, Rite-Aid, Target, K-Mart, Safeway, Costco, Fry's  
 24 Electronics, Albertson's, A&P, Raley's, and Save Mart.

25 45. SoftSheen-Carson: Upon information and belief, SoftSheen-Carson has sold its  
 26 products, including its falsely marked products, in California and in this District and/or in the stream  
 27 of commerce with knowledge that they would be sold in California and in this District. Upon  
 28

<sup>6</sup> <http://www.prestigebrands.com/where-buy.htm>



1 information and belief, such sales are substantial, continuous, and systematic. SoftSheen-Carson  
 2 advertises its products, including the falsely marked products, on its web site, www.softsheen-  
 3 carson.com. A page<sup>7</sup> on that web site directs potential customers to retail locations in California and  
 4 in this District where such products are sold; that page lists 15 such locations in or near this court's  
 5 zip code, 95113.

6 46. Sun: Upon information and belief, Sun has sold its products, including its falsely  
 7 marked products, in California and in this District and/or in the stream of commerce with knowledge  
 8 that they would be sold in California and in this District. Upon information and belief, such sales are  
 9 substantial, continuous, and systematic. Upon information and belief, Sun operates the web sites at  
 10 www.sunproductscorp.com and www.snuggle.com to advertise its falsely marked products. Sun  
 11 encourages users of its products who visit its web sites, including users in California and in this  
 12 District, to "Register with Snuggle® so we can let you know about special offers and new products."<sup>8</sup>

13 47. Sunstar: Upon information and belief, Sunstar has sold its products, including its  
 14 falsely marked products, in California and in this District and/or in the stream of commerce with  
 15 knowledge that they would be sold in California and in this District. Upon information and belief,  
 16 such sales are substantial, continuous, and systematic. Sunstar advertises its products, including the  
 17 falsely marked products, on its web site at www.gumbrand.com. On that web site, Sunstar directs  
 18 prospective customers to search for local retail stores that sell its products, including the falsely  
 19 marked products. That page on Sunstar's web site indicates that at least 9 such retail locations exist  
 20 in or near this court's zip code, 95113. Sunstar's web site also provides a "Shop Now" feature, which  
 21 leads potential customers a Sunstar-branded web site from which such products can be purchased.<sup>9</sup> A  
 22 page on that site states that Sunstar ships such products "to the 50 United States", including  
 23 California.<sup>10</sup> Upon information and belief, such products are sold through this web site, including to  
 24 purchasers in California and in this District.

### 25 Intradistrict Assignment

26 48. Assignment to the San Jose Division is appropriate because a substantial portion of the

27 <sup>7</sup> [http://www.softsheen-carson.com/\\_us/\\_en/stores/index.aspx?zipcode=95113&cntry=US&radius=50&results=20](http://www.softsheen-carson.com/_us/_en/stores/index.aspx?zipcode=95113&cntry=US&radius=50&results=20)

28 <sup>8</sup> <http://www.snuggle.com/data/registration/registration.aspx>

<sup>9</sup> [https://cart.jbutler.com/store.php?crn=286&rn=505&action=show\\_detail&p\\_rn=505](https://cart.jbutler.com/store.php?crn=286&rn=505&action=show_detail&p_rn=505)

<sup>10</sup> <http://cart.jbutler.com/webcontent/policies/coverage.html>

1 events or a substantial portion of the harm underlying this case occurred in Santa Clara County.  
2 Plaintiff SF Tech has its principal place of business in San Jose, in Santa Clara County. Although the  
3 claims in this Complaint arise under 35 U.S.C. § 292, which is codified with the patent statutes, no  
4 claim is asserted concerning infringement or validity of any patent. Therefore, this case appears to be  
5 inappropriate for District-wide assignment under Civil Local Rule 3-2(c).

6 **Count 1: Glad's False Marking**

7 49. SF Tech incorporates by reference all above allegations.

8 50. Upon information and belief, Glad makes and sells many kinds of products, including  
9 resealable sandwich bags and trash bags.

10 51. Glad's resealable sandwich bag products are sold in packages marked: "U.S. Patents:  
11 4,829,641; 4,907,321." Upon information and belief, U.S. Patents Nos. 4,829,641 and 4,907,321  
12 both expired no later than 6/23/2007. These sandwich bag products are being sold retail, marked in  
13 this manner, in 2010, long after the expirations of U.S. Patents Nos. 4,829,641 and 4,907,321. Upon  
14 information and belief, Glad made decisions to mark its sandwich bag products in this manner each  
15 time the packages are printed, including long after those patents expired.

16 52. Glad's trash bag products include "Tall Kitchen" and "OdorShield Tall Kitchen" trash  
17 bags, which are sold in packages marked: "U.S. Patent Number 5,006,380". Glad's trash bag  
18 products also include "ForceFlex" trash bags, which are sold in packages marked: "Licensed under  
19 U.S. Patent Numbers 5,205,650; 5,518,801; 5,650,214; 5,691,035; 5,723,087; 6,394,652 and  
20 5,006,380." Upon information and belief, U.S. Patent No. 5,006,380 expired no later than 6/29/2008.  
21 These trash bag products are being sold retail in 2010 with such false markings, long after the  
22 expiration of U.S. Patent No. 5,006,380. Upon information and belief, Glad made decisions to mark  
23 its trash bag products in this manner each time the packages are printed, including long after U.S.  
24 Patent No. 5,006,380 expired.

25 53. Upon information and belief, Glad marks its products with patents to induce the public  
26 to believe that each such product is protected by each patent listed and with knowledge that nothing is  
27 protected by an expired patent. Accordingly, Glad falsely marked its products with intent to deceive  
28 the public.

**Count 2: Bajer's False Marking**

54. SF Tech incorporates by reference all above allegations.

55. Upon information and belief, Bajer makes and sells many kinds of products, including Pop-Ups!™ collapsible laundry hamper products. Bajer marks the packaging in which its Pop-Ups!™ collapsible laundry hamper products are sold: "Licensed under one or more of the following Patent Category Corp. and/or Bajer Design and Marketing, Inc. Patents: U.S. Patent Nos. RE37,924E; 5,560,385; 5,664,596; 5,816,279; 5,964,533; 5,971,188; 6,006,772; 6,269,826; 6,305,396; 6,318,394; 6,390,111; 6,453,923; 6,575,185; 6,752,163; 6,851,439; 6,926,020; 7,140,376; D431,361; D449,447; D463,638; D438,009s and other U.S. and foreign patents pending." Upon information and belief, U.S. Patent No. 5,971,188 was surrendered on 12/10/2002. Upon information and belief, U.S. Patents Nos. 5,664,596, 6,305,396, 6,318,394, and 6,851,439 expired no later than 9/9/2009, 10/23/2009, 11/20/2009, and 2/8/2009, respectively.

56. Bajer's falsely marked products are being sold retail in 2010 with such false markings, after the surrender of U.S. Patent No. 5,971,188 and after the expiration of U.S. Patents Nos. 5,664,596, 6,305,396, 6,318,394, and 6,851,439. Upon information and belief, Bajer has made decisions to falsely mark its products after the surrender of U.S. Patent No. 5,971,188 and after the expiration of U.S. Patents Nos. 5,664,596, 6,305,396, 6,318,394, and 6,851,439, including each time it has printed or otherwise created such packaging.

57. Upon information and belief, Bajer marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by a surrendered patent or an expired patent. Accordingly, Bajer falsely marked its products with intent to deceive the public.

**Count 3: Bayer's False Marking**

58. SF Tech incorporates by reference all above allegations.

59. Upon information and belief, Bayer makes and sells many kinds of products, including healthcare and pharmaceutical products and including its products branded "Ketostix® Reagent Strips for Urinalysis". Bayer marks the packaging in which its Ketostix strip products are sold with "U.S. Patent No.: 4,147,514". Upon information and belief, U.S. Patent No. 4,147,514 expired no

1 later than 11/22/1997.

2 60. Bayer's falsely marked products are being sold retail in 2010 with such false markings,  
3 many years after the expiration of U.S. Patent No. 4,147,514. Upon information and belief, Bayer  
4 has made decisions to falsely mark its products long after the expirations of these patents, including  
5 each time it has printed or otherwise created such packaging.

6 61. Upon information and belief, Bayer marks its products with patents to induce the  
7 public to believe that each such product is protected by each patent listed and with knowledge that  
8 nothing is protected by an expired patent. Accordingly, Bayer falsely marked its products with intent  
9 to deceive the public.

10 **Count 4: Bright Image's False Marking**

11 62. SF Tech incorporates by reference all above allegations.

12 63. Upon information and belief, Bright Image makes and sells lighting products under the  
13 brand name Touch & Glow. Many Touch & Glow lighting products are falsely marked. For  
14 example, Bright Image's "Lamp Touch Dimmer & Auto Turn-Off Timer" products are marked "U.S.  
15 PATENT NO. 4,632,490". Also, Bright Image advertises its products on its web site, at  
16 www.touchandglow.com. On the home page of its web site, Bright Image provides a link to its  
17 catalog,<sup>11</sup> in which Bright Image further advertises its products. That catalog further marks Bright  
18 Image's products: "Products manufactured under U.S. Patent Nos. D436,082 S, D435,832 S,  
19 4,632,490, 4,668,877 and other patents pending." The products falsely marked in this Bright Image  
20 catalog are:

- 21 a. Model Ezt-712: 4-In-1 Photo Ez-Timer (UPC#081077007123)
- 22 b. Model Ezt-710: 3-In-1 Photo Timer (UPC#081077007109)
- 23 c. Model Ezt-717: Vacation Random On/Off Timer (UPC#081077007178)
- 24 d. Model Ezt-753: Floodlight Timer 1/2-12 Hr Adjustable (UPC#081077007536)
- 25 e. Model Ezt-Acl: Automatic Closet Light (UPC#081077007994)
- 26 f. Model S-751: Automatic Light Control (UPC#081077007512)
- 27 g. Model S-752: Automatic Floodlight Control (UPC#081077007529)

28 <sup>11</sup> [http://www.touchandglow.com/v/files/T&G\\_Catalog.pdf](http://www.touchandglow.com/v/files/T&G_Catalog.pdf)

- 1 h. Model Ezt-12h: 12 Hour Adjustable Auto Turn-Off Timer
- 2 (UPC#081077007727)
- 3 i. Model Ezt-4hr: 4 Hour Adjustable Timer (UPC#081077007710)
- 4 j. Model Ezt-60m: 60 Minute Adjustable Auto Turn Off Timer
- 5 (UPC#081077007734)
- 6 k. Model Ezt-30m: 30 Minute Adjustable Auto Turn Off Timer
- 7 (UPC#081077007741)
- 8 l. Model S-323: Touch Dimmer & 3-Way Timer (UPC#081077003231)
- 9 m. Model S-327: Baby-Go-To-Sleep Dimmer & 3-Way Timer
- 10 (UPC#081077003279)
- 11 n. Model S-300: Rotary Lamp Dimmer, Screw-In (UPC#081077003002)
- 12 o. Model S-9: Touch Pad Full Range Dimmer, Screw-In (UPC#081077000094)
- 13 p. Model S-6: Touch Pad On/Off Switch, Screw-In (UPC#081077000063)
- 14 q. Model S-5: Touch Pad 3-Way Dimmer, Screw-In (UPC#081077000056)
- 15 r. Model S-7: Touch Pad Dimmer & 3-Way Timer (UPC#081077000070)
- 16 s. Model T-409: Touch Pad Dimmer, Plug-In (UPC#081077004092)
- 17 t. Model Ez-109: Full Range Dimmer Switch, Plug-In (UPC#081077001091)
- 18 u. Model Ez-103: Plug-In 3-Way Dimmer Switch, Plug-In (UPC#081077001039)
- 19 v. Model Ez-101: Plug-In On/Off Switch, Plug-In (UPC#081077001015)
- 20 w. Model Ez-209: Full Range Dimmer Switch, Screw-In (UPC#081077002098)
- 21 x. Model Ez-207: 3-Way Dimmer & Timer, Screw-In (UPC#081077002074)
- 22 y. Model Ez-203: Screw-In 3-Way Dimmer Switch , Screw-In
- 23 (UPC#081077002036)
- 24 z. Model Ez-201: Screw-In Touch On/Off Switch, Screw-In
- 25 (UPC#081077002012)
- 26 aa. Model Ez-119: Full Range Wall Dimmer (UPC#081077001190)
- 27 bb. Model Ez-113: 3-Way Touch Wall Dimmer (UPC#081077001138)
- 28 cc. Model Ez-111: Touch On/Off Wall Switch (UPC#081077001114)



- dd. Model Ez-311: On/Off Wall Box Switch (UPC#081077003118)
- ee. Model Ez-309: Full Range Dimmer For Fixture Box (UPC#081077030909)
- ff. Model Ez-301: Touch On/Off Switch For Fixture Box (UPC#081077030107)
- gg. Model Ez-501: Add-On Wall Plate (UPC#081077005013)
- hh. Model Ez-502: Add-On Touch Wire (UPC#081077005020)
- ii. Model Ez-449: Cabinet Lights Touch Dimmer (UPC#081077004498)

64. The Bright Image advertising emphasizes the novel, innovative features of its products, which further induces the public to believe that those products are patented. For example, Bright Image's web site claims:<sup>12</sup> "For over 25 years, Bright Image Corporation has been leading the market with new and innovative lighting controls under our registered Touch & Glow® products brand name." For example, Bright Image's catalog claims, on page 12:

- Bright Image offers the latest, technologically most advanced, and most comprehensive selection of touch dimmer controls available in the world.
- Bright Image offers trendsetting, never-offered-before, socket photoelectric timer controls and radio frequency (RF) wireless remote controls. BIC manufactures the widest selection of new products in its category.
- Bright Image Corporation is the only manufacturer that offers touch products that work with fluorescents, incandescent, halogen, low voltage lights and holiday light bulbs.
- Bright Image Corporation is the only manufacturer that offers screw-in socket photo-timers, automatic closet light and auto shut-off lamp timers.
- Bright Image is the only manufacturer that designed and offers EZ-Switch line of products that require no 120V wiring thus saving substantial money and time. [...]
  - World's most compact plug-in controls that do not block the second outlet
  - The most compact screw-in socket controls to fit better in small lamps
  - "Soft-Start" technology for dimmers which substantially increases bulb life
  - Advanced "Flicker-Free" circuit to eliminate false turn-ons of photo-controls
  - Most advanced " Auto Gain Circuit" provides rock-solid touch controls

<sup>12</sup> <http://www.touchandglow.com/ABOUT-US-s/29.htm>

1 — For use of photoelectric controls at evening and early dark morning  
2 time, we pioneered and introduced the  
3 latest feature of "Dual On/Off Circuit".

4 — Safety enhancing "Auto Current Limit Circuit" helps prevent  
5 electrical overloads

6 — To protect from transformer thermal damage, our full range  
7 dimmers come with a unique  
8 "Automatic Safety Shutdown Circuit". This home safety feature works  
9 with both magnetic and electronic  
10 transformers coupled with low-voltage halogen and incandescent lights.

11 65. Upon information and belief, U.S. Patents Nos. 4,632,490 and 4,668,877 expired no  
12 later than 11/22/2005 and 7/13/2005, respectively. Bright Image continues to mark its products in the  
13 manner described above in 2010, long after the expirations of those patents. Bright Image's web site  
14 is marked "Copyright © 2009 Bright Image Corporation", which indicates that Bright Image made  
15 decisions to mark its products in the manner described above long after those patents expired.

16 66. Upon information and belief, Bright Image marks its products with patents to induce  
17 the public to believe that each such product is protected by each patent listed and with knowledge that  
18 nothing is protected by an expired patent. Accordingly, Bright Image falsely marked its products  
19 with intent to deceive the public.

#### 20 **Count 5: Church & Dwight's False Marking**

21 67. SF Tech incorporates by reference all above allegations.

22 68. Upon information and belief, Church & Dwight makes and sells many kinds of  
23 products, including Mentadent toothpaste products and Arm & Hammer Extra Whitening toothpaste  
24 products and Arm & Hammer Baking Soda & Peroxide toothpaste products. Church & Dwight  
25 marks the packaging in which its Mentadent toothpaste products are sold: "One or more of the  
26 following patents may apply: Patent Nos. 5,020,694; 5,038,963; 5,059,417; 5,085,853; 5,289,949;  
27 5,372,803; 5,456,902; 5,616,313; 5,632,972; 5,645,193". Church & Dwight marks the packaging in  
28 which these Arm & Hammer toothpaste products are sold: "U.S. Patent #4,891,211/5,424,060".  
Upon information and belief, U.S. Patents Nos. 5,020,694, 5,038,963, and 4,891,211 expired no later  
than 3/17/2009, 3/17/2009, and 6/30/2008, respectively.

69. Church & Dwight's falsely marked products are being sold retail in 2010 with such  
false markings, after the expirations of U.S. Patents Nos. 5,020,694, 5,038,963, and 4,891,211. Upon

information and belief, Church & Dwight has made decisions to falsely mark its products after the expirations of these patents, including each time it has printed or otherwise created such packaging.

70. Upon information and belief, Church & Dwight marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Church & Dwight falsely marked its products with intent to deceive the public.

**Count 6: Colgate-Palmolive's False Marking**

71. SF Tech incorporates by reference all above allegations.

72. Upon information and belief, Colgate-Palmolive makes and sells many kinds of products, including Colgate Total Clean Mint toothpaste, Colgate Total Advanced Clean plus whitening toothpaste, Colgate Total Advanced Whitening toothpaste, Colgate Total Whitening toothpaste, and Colgate Total Whitening gel. Colgate-Palmolive marks the packages in which its Colgate Total Clean Mint toothpaste products are sold: "USP 5,156,835". Upon information and belief, U.S. Patent No. 5,156,835 expired no later than 10/21/2009.

73. Colgate-Palmolive's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. 5,156,835. Upon information and belief, Colgate-Palmolive has made decisions to falsely mark its products after the expiration of U.S. Patent No. 5,156,835, including each time it has printed or otherwise created such packaging.

74. Upon information and belief, Colgate-Palmolive marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Colgate-Palmolive falsely marked its products with intent to deceive the public.

**Count 7: Combe's False Marking**

75. SF Tech incorporates by reference all above allegations.

76. Upon information and belief, Combe makes and sells many kinds of products, including LiceMD Lice & Egg Treatment. Combe marks the packages in which LiceMD is sold: "United States: #6,683,065 and #4,612,944". Upon information and belief, U.S. Patent No. 4,612,944 expired no later than 2/21/2005.

77. Combe's falsely marked products are being sold retail in 2010, after the expiration of U.S. Patent No. 4,612,944. Upon information and belief, Combe has made decisions to mark its falsely marked products after the expiration of U.S. Patent No. 4,612,944, including each time it has printed or otherwise created such packaging.

78. Upon information and belief, Combe marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Combe falsely marked its products with intent to deceive the public.

**Count 8: Dial's False Marking**

79. SF Tech incorporates by reference all above allegations.

80. Upon information and belief, Dial makes and sells many kinds of products, including Combat Quick Kill Formula 3 ant traps. Dial marks the packages in which these products are sold: "U.S. Patent No. 4,563,836 and other patents pending." Upon information and belief, U.S. Patent No. 4,563,836 expired no later than 1/15/2003.

81. Dial's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. 4,563,836. Upon information and belief, Dial has made many decisions to mark its falsely marked products after the expiration of U.S. Patent No. 4,563,836, including each time it has printed or otherwise created such packaging.

82. Upon information and belief, Dial marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Dial falsely marked its products with intent to deceive the public.

**Count 9: Exergen's False Marking**

83. SF Tech incorporates by reference all above allegations.

84. Upon information and belief, Exergen makes and sells many kinds of products, including Comfort Scanner Temporal Thermometers. Exergen marks the packages in which its Comfort Scanner thermometers are sold: "Protected by the following U.S. Patents: 4636091, 5012813, 5199436, 5653238, 5874736, 6045257, 6047205, 6056435, 6292685, 6299347, 6319206,

6402371, other US and foreign patents pending". Upon information and belief, U.S. Patents Nos. 4,636,091, 5,012,813, 5,199,436, and 5,653,238 expired no later than 6/28/2005, 12/7/2008, 2/20/2008, 12/7/2008, respectively.

85. Exergen's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patents Nos. 4,636,091, 5,012,813, 5,199,436, and 5,653,238. Upon information and belief, Exergen has made many decisions to mark its falsely marked products after the expiration of U.S. Patents Nos. 4,636,091, 5,012,813, 5,199,436, and 5,653,238, including each time it has printed or otherwise created such packaging.

86. Upon information and belief, Exergen marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Exergen falsely marked its products with intent to deceive the public.

**Count 10: GSK's False Marking**

87. SF Tech incorporates by reference all above allegations.

88. Upon information and belief, GSK makes and sells many kinds of products, including Aquafresh Ultimate White toothpaste. GSK marks the packages in which its Aquafresh Ultimate White toothpaste products are sold: "Covered by U.S. Patent Nos. 4,923,684 and 4,985,236". Such packages are also marked with a copyright date of 2008. Upon information and belief, U.S. Patents Nos. 4,923,684 and 4,985,236 expired no later than 5/9/2009 and 5/8/2007, respectively.

89. GSK's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patents Nos. 4,923,684 and 4,985,236. Upon information and belief, GSK has made many decisions to mark its falsely marked products after the expiration of U.S. Patents Nos. 4,923,684 and 4,985,236, including each time it has printed or otherwise created such packaging.

90. Upon information and belief, GSK marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, GSK falsely marked its products with intent to deceive the public.



**Count 11: Hi-Tech Pharmacal's False Marking**

91. SF Tech incorporates by reference all above allegations.

92. Upon information and belief, Hi-Tech Pharmacal makes and sells many kinds of products, including Zostrix Neuropathy Cream. Hi-Tech Pharmacal marks the packages in which its Zostrix Neuropathy Cream products are sold: "Covered by U.S. Patent No 4,997,853". Upon information and belief, U.S. Patent No. 4,997,853 expired no later than 12/3/2008.

93. Hi-Tech Pharmacal's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. 4,997,853. Upon information and belief, Hi-Tech Pharmacal has made many decisions to mark its falsely marked products after the expiration of U.S. Patent No. 4,997,853, including each time it has printed or otherwise created such packaging.

94. Upon information and belief, Hi-Tech Pharmacal marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Hi-Tech Pharmacal falsely marked its products with intent to deceive the public.

**Count 12: Johnson's False Marking**

95. SF Tech incorporates by reference all above allegations.

96. Upon information and belief, Johnson makes and sells many kinds of products, including Ultrasheen Supreme relaxer and Gentle Treatment. Johnson marks the packages in which its Ultrasheen Supreme relaxer products are sold: "This product may be covered by one or more of the following US Patent Nos: 5,679,327; 5,376,364; 5,293,885; 4,950,485; 5,171,565; 5,068,101". Johnson marks the packages in which its Gentle Treatment products are sold: "US. Patent No. 4,950,485; US. Patent No. 5,171,565; US. Patent No. 5,376,364". Upon information and belief, U.S. Patents Nos. 4,950,485, 5,068,101, 5,171,565, and 5,376,364 expired no later than 3/26/2008.

97. Johnson's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patents Nos. 4,950,485, 5,068,101, 5,171,565, and 5,376,364. Upon information and belief, Johnson has made many decisions to mark its falsely marked products after the expiration of U.S. Patents Nos. 4,950,485, 5,068,101, 5,171,565, and 5,376,364, including each time it has printed or otherwise created such packaging.

1           98.     Upon information and belief, Johnson marks its products with patents to induce the  
2 public to believe that each such product is protected by each patent listed and with knowledge that  
3 nothing is protected by an expired patent. Accordingly, Johnson falsely marked its products with  
4 intent to deceive the public.

5                                   **Count 13: Maybelline's False Marking**

6           99.     SF Tech incorporates by reference all above allegations.

7           100.    Upon information and belief, Maybelline makes and sells many kinds of products,  
8 including mascara products. Several varieties of Maybelline's Volume Express Mascara products  
9 (colors: 201 very black, 202 brownish black, 221 very black, 261 very black) are marked: "U.S.  
10 PATENTS: 4,871,536; 4,877,622; 4,898,193; 4,993,440 U.S. PATENTS PENDING". At least one  
11 color (251 very black) of Maybelline's Volume Express Mascara products are marked: "U.S.  
12 PATENTS: 4,877,622; 4,898,193; 4,993,440". At least one color (302 brownish black) of  
13 Maybelline's Full 'N Soft Mascara products is marked: "U.S. PATENTS: 4,887,622; 5,618,523;  
14 6,015,574; 6,221,389; 6,467,967". At least one color (352 brownish black) of Maybelline's Lash  
15 Discovery Mascara products is marked: "U.S. PATENTS: 4,871,536." (The marking with U.S.  
16 Patent No. 4,877,622 appears to be in error; Maybelline appears to have intended to mark with U.S.  
17 Patent No. 4,887,622.) Upon information and belief, U.S. Patents Nos. 4,871,536, 4,877,622,  
18 4,887,622, 4,898,193, and 4,993,440 expired no later than 10/4/2006, 1/14/2009, 11/31/2007,  
19 10/21/2007, and 2/20/2008, respectively.

20           101.    Maybelline' falsely marked products are being sold retail in 2010 with such false  
21 markings, after the expiration of U.S. Patents Nos. 4,871,536, 4,877,622, 4,887,622, 4,898,193, and  
22 4,993,440. Upon information and belief, Maybelline has made many decisions to mark its falsely  
23 marked products after the expiration of U.S. Patents Nos. 4,871,536, 4,877,622, 4,887,622,  
24 4,898,193, and 4,993,440, including each time it has printed or otherwise created such packaging.

25           102.    Upon information and belief, Maybelline marks its products with patents to induce the  
26 public to believe that each such product is protected by each patent listed and with knowledge that  
27 nothing is protected by an expired patent. Accordingly, Maybelline falsely marked its products with  
28 intent to deceive the public.

**Count 14: McNeil-PPC's False Marking**

103. SF Tech incorporates by reference all above allegations.

104. Upon information and belief, McNeil-PPC makes and sells many kinds of products, including Nizoral anti-dandruff shampoo. McNeil-PPC marks the packages in which its Nizoral anti-dandruff shampoo products are sold: "US Patent Nos. 4,335,125; 4,942,162 and 5,456,851". McNeil-PPC also advertises its Nizoral products on its web site, at [www.nizoral.com](http://www.nizoral.com). One advertisement<sup>13</sup> on that web site, describes the Nizoral products and is marked: "US Patent Nos. 4,335,125; 4,942,162 and 5,456,851". Upon information and belief, U.S. Patents Nos. 4,335,125 and 4,942,162 expired no later than 6/16/1999 and 7/18/2007, respectively.

105. Upon information and belief, McNeil-PPC makes and sells Rembrandt Fresh Mint toothpaste through its division Johnson & Johnson Healthcare Products. McNeil-PPC marks the packages in which its Rembrandt Fresh Mint toothpaste products are sold: "US patent 4,986,981". Such packages are also marked with a copyright date of 2008. Upon information and belief, U.S. Patent No. 4,986,981 expired no later than 1/23/2008.

106. McNeil-PPC's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patents Nos. 4,335,125, 4,942,162, and 4,986,981. Upon information and belief, McNeil-PPC has made many decisions to mark its falsely marked products after the expiration of U.S. Patents Nos. 4,335,125, 4,942,162, and 4,986,981, including each time it has printed or otherwise created such packaging.

107. Upon information and belief, McNeil-PPC marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, McNeil-PPC falsely marked its products with intent to deceive the public.

**Count 15: Medtech's False Marking**

108. SF Tech incorporates by reference all above allegations.

109. Upon information and belief, Medtech makes and sells healthcare products, including Dermoplast Pain Relieving Spray and Dermoplast Antibacterial Pain Relieving Spray. Medtech's

<sup>13</sup> [http://www.nizoral.com/vcrc/drugfacts/nizoral/niz\\_shampoo\\_110900.pdf](http://www.nizoral.com/vcrc/drugfacts/nizoral/niz_shampoo_110900.pdf)

1 Dermoplast products are marked "U.S. Pat. No. 4,600,575". Upon information and belief, U.S.  
2 Patent No. 4,600,575 expired no later than 7/16/2003.

3 110. The labels on canisters of Dermoplast Pain Relieving Spray product are also marked  
4 "© 2004 Distributed by Medtech Products, Inc." The labels on canisters of Dermoplast Antibacterial  
5 Pain Relieving Spray are also marked "© 2005 Distributed by Medtech Products, Inc." These  
6 Dermoplast products are being sold retail, marked in this manner, in 2010. Thus, upon information  
7 and belief, Medtech made decisions to mark its Dermoplast products in this manner at least in 2004  
8 and 2005 and again each time such labels are printed — all long after U.S. Patent No. 4,600,575  
9 expired.

10 111. Upon information and belief, Medtech marks its products with patents to induce the  
11 public to believe that each such product is protected by each patent listed and with knowledge that  
12 nothing is protected by an expired patent. Accordingly, Medtech falsely marked its products with  
13 intent to deceive the public.

14 **Count 16: Playtex's False Marking**

15 112. SF Tech incorporates by reference all above allegations.

16 113. Upon information and belief, Playtex makes and sells many kinds of products,  
17 including Playtex Kinder-Grip Bottle products. Playtex marks the packages in which its Playtex  
18 Kinder-Grip Bottle products are sold: "U.S. Patent Nos. 5,215,203 and D-320,859". Upon  
19 information and belief, U.S. Patents Nos. 5,215,203 and D320,859 expired no later than 11/29/2006  
20 and 10/16/2005, respectively.

21 114. Playtex's falsely marked products are being sold retail in 2010 with such false  
22 markings, after the expiration of U.S. Patents Nos. 5,215,203 and D320,859. Upon information and  
23 belief, Playtex has made many decisions to mark its falsely marked products after the expiration of  
24 U.S. Patents Nos. 5,215,203 and D320,859, including each time it has printed or otherwise created  
25 such packaging.

26 115. Upon information and belief, Playtex marks its products with patents to induce the  
27 public to believe that each such product is protected by each patent listed and with knowledge that  
28 nothing is protected by an expired patent. Accordingly, Playtex falsely marked its products with

1 intent to deceive the public.

2 **Count 17: RBI's False Marking**

3 116. SF Tech incorporates by reference all above allegations.

4 117. Upon information and belief, RBI makes and sells many kinds of products, including  
5 Lysol Neutra Air Sanitizing Spray. RBI marks the packages in which its Lysol Neutra Air Sanitizing  
6 Spray products are sold: "U.S. Patent Number 5,795,566" and "U.S. Patent Number 4,840,792". RBI  
7 advertises its Lysol Neutra Air Sanitizing Spray products on its web site. That advertisement<sup>14</sup>  
8 emphasizes that the product is patented:

9 LYSOL® NEUTRA AIR® Sanitizing Spray, our breakthrough in odor  
10 elimination, contains a patented odor-eliminating technology that  
11 provides a triple-action benefit:

- 12 1. Destroys odors by killing bacteria at the source so odors won't come  
13 back.\*
- 14 2. Eliminates odor in the air from odor-causing bacteria.
- 15 3. Refreshes the air with crisp, clean fragrance.

16 118. Upon information and belief, U.S. Patents Nos. 4,840,792 and 5,795,566 expired on  
17 5/28/2007.

18 119. RBI's falsely marked products are being sold retail in 2010 with such false markings  
19 and advertised in 2010 with such false markings, after the expiration of U.S. Patents Nos. 4,840,792  
20 and 5,795,566. Upon information and belief, RBI has made many decisions to mark its falsely  
21 marked products after the expiration of U.S. Patents Nos. 4,840,792 and 5,795,566, including each  
22 time it has printed or otherwise created such packaging and each time such advertisements are served  
23 to Internet users.

24 120. Upon information and belief, RBI marks its products with patents to induce the public  
25 to believe that each such product is protected by each patent listed and with knowledge that nothing is  
26 protected by an expired patent. Accordingly, RBI falsely marked its products with intent to deceive  
27 the public.

28 **Count 18: Roche's False Marking**

121. SF Tech incorporates by reference all above allegations.

122. Upon information and belief, Roche sells many healthcare and pharmaceutical

<sup>14</sup> <http://lysol.com/products/neutra-air-products/sanitizing-spray/>



products, including Accu-Chek Softclix lancets. These lancet products are marked: "ACCU-CHEK Softclix is protected by U.S. Patents Nos. 4,924,879 and Re. 35,803." Roche advertises its Accu-Chek products on its web site at [www.accu-chek.com](http://www.accu-chek.com). As part of that advertising, Roche provides manuals which further advertise its lancet products. In the advertisement titled "Accu-Chek Compact Owner's Booklet",<sup>15</sup> Roche further marks its lancet products: "The ACCU-CHEK Softclix lancet device and its use are protected by U.S. Patent Nos. 4,924,879 and Re. 35,803." In the advertisement titled "Accu-Chek Active Owner's Booklet",<sup>16</sup> Roche further marks its lancet products: "The ACCU-CHEK Softclix lancet device and use are protected by U.S. Patent Nos. 4,924,879; 6,419,661; 7,077,828; and Re. 35,803." In the advertisement titled Accu-Chek Softclix User Guide,<sup>17</sup> Roche further marks its Softclix and Softclix Plus products: "This ACCU-CHEK Softclix device and its use are protected by U.S. Patent Nos. 4,924,879 and Re. 35,803." Roche represents on the web pages advertise these products that the advertisements were "Last updated: 11.12.2009".<sup>18</sup>

123. Upon information and belief, U.S. Patent No. 4,924,879 expired no later than 10/8/2008. Roche's Accu-Chek products are sold retain in 2010, and the above-described advertisements are on Roche's web site in 2010, long after the expiration of U.S. Patent No. 4,924,879. Thus, upon information and belief, Roche made decisions to mark its Accu-Chek products in this manner long after U.S. Patent No. 4,924,879 expired.

124. Upon information and belief, Roche marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Roche falsely marked its products with intent to deceive the public.

### **Count 19: SoftSheen-Carson's False Marking**

125. SF Tech incorporates by reference all above allegations.

<sup>15</sup> Available at: <https://www.accu-chek.com/us/logretriever.htm?urlString=cmV0cmllldmVYL3B1YmxpYy9SRENQVDBfTU5MMF8xMjEwMS5wZGY=>

<sup>16</sup> Available at: <https://www.accu-chek.com/us/logretriever.htm?urlString=cmV0cmllldmVYL3B1YmxpYy9SREFUVjBfTU5MMF8xMjEwMS5wZGY=>

<sup>17</sup> <https://www.accu-chek.com/us/logretriever.htm?urlString=cmV0cmllldmVYL3B1YmxpYy9BY2N1LUNoZWNRX1NvZnRfQ2xpeC5wZGY=>

<sup>18</sup> <https://www.accu-chek.com/us/lancing-devices/softclix-plus.html> and <https://www.accu-chek.com/us/lancing-devices/softclix.html>

1 126. Upon information and belief, SoftSheen-Carson makes and sells many kinds of  
2 products, including Optimum Care Anti-Breakage Therapy products. SoftSheen-Carson marks the  
3 packaging in which its Optimum Care Anti-Breakage Therapy products are sold: "This product may  
4 be covered by US Patents #5,618,523 and 5,077,042". Upon information and belief, U.S. Patent No.  
5 5,077,042 expired no later than 3/26/2008.

6 127. SoftSheen-Carson's falsely marked products are being sold retail in 2010 with such  
7 false markings, after the expiration of U.S. Patent No. 5,077,042. Upon information and belief,  
8 SoftSheen-Carson has made decisions to falsely mark its products long after the expirations of that  
9 patent, including each time it has printed or otherwise created such packaging.

10 128. Upon information and belief, SoftSheen-Carson marks its products with patents to  
11 induce the public to believe that each such product is protected by each patent listed and with  
12 knowledge that nothing is protected by an expired patent. Accordingly, SoftSheen-Carson falsely  
13 marked its products with intent to deceive the public.

14 **Count 20: Sun's False Marking**

15 129. SF Tech incorporates by reference all above allegations.

16 130. Upon information and belief, Sun makes and sells many kinds of products, including  
17 Snuggle fabric softener products. Sun marks the packaging in which its Snuggle fabric softener  
18 products, such as the White Lavender and Sandalwood variety, are sold with "US Patent Nos.  
19 5,288,417 and 5,108,009; other patents pending." Upon information and belief, U.S. Patent No.  
20 5,108,009 expired no later than April 29, 2009.

21 131. Sun's falsely marked products are being sold retail in 2010 with such false markings,  
22 after the expiration of U.S. Patent No. 5,108,009. Upon information and belief, Sun has made  
23 decisions to falsely mark its products long after the expirations of that patent, including each time it  
24 has printed or otherwise created such packaging.

25 132. Upon information and belief, Sun marks its products with patents to induce the public  
26 to believe that each such product is protected by each patent listed and with knowledge that nothing is  
27 protected by an expired patent. Accordingly, Sun falsely marked its products with intent to deceive  
28 the public.

**Count 21: Sunstar's False Marking**

133. SF Tech incorporates by reference all above allegations.

134. Upon information and belief, Sunstar makes and sells many kinds of products, including GUM Proxabrush. Sunstar marks the packaging in which its GUM Proxabrush Handle Snap-on products are sold with: "The PROXABRUSH Handle is protected by patents pending or one or more of the following U.S. Patents: 5,027,467; 5,201,091; 5,633,083 and Reg. U.S. Pat. & T.M. Off." Sunstar marks the packaging in which its GUM Proxabrush Trav-ler products are sold: "The PROXABRUSH TRAV-LER is protected by one or more of the following U.S. Patents: #4,691,404; #5,488,751; 5,633,083". Upon information and belief, U.S. Patents Nos. 4,691,404, 5,027,467, and 5,201,091 expired no later than 2/22/2005, 2/7/2010, and 7/2/2008, respectively.

135. Sunstar's falsely marked products are being sold retail in March 2010 with such false markings, after the expirations of U.S. Patents Nos. 4,691,404, 5,027,467, and 5,201,091. Upon information and belief, Sunstar has made decisions to falsely mark its products after the expirations of these patents, including each time it has printed or otherwise created such packaging.

136. Upon information and belief, Sunstar marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Sunstar falsely marked its products with intent to deceive the public.

**Demand For Judgment**

SF Tech demands judgment against each defendant, as follows:

1. A declaration that each defendant violated 35 U.S.C. § 292.
2. A civil fine of \$500 for each offense — half paid to the U.S., and half paid to SF Tech.
3. Any other relief the court deems appropriate.

**Demand For Jury Trial**

SF Tech demands a jury trial on all issues so triable.

Date: March 5, 2010

Mount & Stoelker, P.C.,

/s/ Dan Fingerman

Attorneys for San Francisco Technology Inc.